

Explanation: This Ordinance amends Chapter 64, Unfit Buildings, of the Code of the Borough of Rocky Hill by updating the Chapter to reflect Legislative changes made in the authorizing State statute, N.J.S.A. 40:48-2.3 et seq.

Borough of Rocky Hill

Ordinance #9, 2010

AN ORDINANCE AMENDING CHAPTER 64, UNFIT BUILDINGS, OF THE CODE OF THE BOROUGH OF ROCKY HILL BY UPDATING THE CHAPTER TO REFLECT LEGISLATIVE CHANGES MADE IN THE AUTHORIZING STATE STATUTE, N.J.S.A. 40:48-2.3 ET SEQ.

BE IT ORDAINED, by the Mayor and Council of the Borough of Rocky Hill, County of Somerset, State of New Jersey, that Chapter 64 of the Code of the Borough of Rocky Hill, entitled “Unfit Buildings” is hereby amended as follows:

Section 1. Chapter 64, Unfit Buildings, is being amended to reflect Legislative changes made to the underlying State statutory authority found at N.J.S.A. 40:48-2.3 et seq.

Section 2. Amend Chapter 64, Unfit Buildings, to read as follows:¹

Chapter 64:

BUILDINGS, UNFIT

§ 64-1. ~~Designated~~ Public Officer.

The Health Officer of the Borough of Rocky Hill ~~be and he~~ is hereby designated as the primary Public Officer to exercise the powers prescribed by this Chapter and by N.J.S.A. 40:48-2.3 et seq., and he the Health Officer shall serve in such capacity without any additional salary compensation. Pursuant to N.J.S.A. 40:48-2.4(b), if required, the Mayor, with the

¹ **Editor’s Note:** The portions to be deleted are shown with strike-outs and will be deleted from the codified version of this Ordinance and the underlined portions will remain in the codified version of this Ordinance.

advice and consent of the Borough Council, may by resolution designate an additional Public Officer or Public Officers through appointment or contractual services agreement to exercise the powers prescribed by this chapter.

§ 64-1.1 Terms Defined.

As used in this chapter, the following terms shall have the meanings indicated pursuant to N.J.S.A. 40:48-2.4:

GOVERNING BODY shall mean the Council of the Borough of Rocky Hill in the County of Somerset.

PUBLIC OFFICER shall mean the officer, officers, board or body who is or are authorized by Chapter 64 of the Code of the Borough of Rocky Hill adopted to exercise the powers prescribed by N.J.S.A. 40:48-2.3 *et seq.* Notwithstanding any other provision of law to the contrary, nothing shall prevent the Borough from designating more than one Public Officer for different purposes as provided by law.

PUBLIC AUTHORITY shall mean any housing authority or any officer who is in charge of any department or branch of the government of the municipality, county or State relating to health, fire, building regulations, or to other activities concerning buildings in the municipality.

OWNER shall mean the holder or holders of the title in fee simple.

PARTIES IN INTEREST shall mean all individuals, associations and corporations who have interests of record in a building and any who are in actual possession thereof.

BUILDING shall mean any building, or structure, or part thereof, whether used for human habitation or otherwise, and includes any outhouses, and appurtenances belonging thereto or usually enjoyed therewith.

§ 64-2. Conditions rendering buildings unfit for human habitation, occupancy, use; repairing, demolition.

- A. For the purpose of ~~this~~ Chapter 64 of the Code of the Borough of Rocky Hill, pursuant to N.J.S.A. 40:48-2.6, the ~~Health~~ Public Officer may determine that a ~~dwelling~~ building is unfit for human habitation or occupancy or use if ~~he~~ the Public Officer finds that conditions exist in such ~~dwelling~~ building which are dangerous or injurious to the health or safety of the occupants of such ~~dwelling~~ building, the occupants of neighboring ~~dwellings~~ buildings or other residents of the Borough of Rocky Hill. Such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities;

lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair, structural defects; ~~or~~ or ~~uncleanliness; or failure to comply with the requirements of the building code (N.J.S.A. 52:27D-119 *et seq*) or the certificate of occupancy.~~

- B. Pursuant to N.J.S.A. 40:48-2.3a, any building or buildings, or parts thereof, which have been damaged to such an extent that nothing remains but the walls, or parts of the walls and other supports, shall, regardless of the safety and sturdiness of those remaining walls or parts thereof, be deemed inimical to the welfare of the residents of the Borough, and the Borough may exercise its police powers to repair, demolish, or cause the repairing or demolishing of the building or buildings, or parts thereof, pursuant to N.J.S.A. 40:48-2.3 *et seq.* and the procedures set forth therein.

§ 64-3. Adoption of standards by reference.

Pursuant to the provisions of ~~Chapter 21, P.L. 1946 (N.J.S.A. 40:49-5.1)~~ N.J.S.A. 2A:42-74 *et seq.*, the New Jersey State Housing Code as ~~approved~~ adopted by the Department of Community Affairs and promulgated at N.J.A.C. 5:28-1 *et seq.* ~~Departments of Health and Conservation and Economic Development and filed in the Secretary of State's office~~ is hereby accepted, adopted and established as a standard to be used as a guide in determining the fitness of a building for human habitation or occupancy or use. A copy of the New Jersey State Housing Code is ~~annexed to this chapter, and three copies of the same have been placed on file in the office of the Borough Clerk and are~~ is available to all persons desiring to use and examine the same.

§ 64-4. Service of complaint and notice of hearing.

Whenever a petition is filed with the ~~Health~~ Public Officer by a public authority as defined in ~~§64-1.1~~, or by at least five (5) residents of the ~~municipality~~ Borough of Rocky Hill charging that any ~~dwelling building~~ is unfit for human habitation ~~as herein defined, or occupancy or use, as defined in §64-3,~~ or whenever it appears to the ~~Health~~ Public Officer (on his own motion) that any ~~dwelling building~~ is unfit for human habitation, ~~as herein defined, or occupancy or use,~~ he the Public Officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such ~~dwelling building~~ a complaint stating the charges in that respect and containing a notice that a hearing will be held before the ~~Health~~ Public Officer (or his designated agent or the Borough Council) at a place therein fixed not less than ~~10~~ seven (7) days nor more than thirty (30) days after the serving of said complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaints; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the ~~Health~~ Public Officer (or designated agent or the Borough Council).

§ 64-5. Service of order.

A. If, after such notice and hearing, the ~~Health~~ Public Officer determines that the ~~dwelling building~~ under consideration is unfit for human habitation, as herein defined, or occupancy or use, ~~he~~ the Public Officer shall state in writing ~~his~~ any findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof and parties in interest an order requiring:

A(1). The repair, alteration or improvement of the ~~said~~ building to be made by the owner, within a reasonable time, which time shall be set forth in the order or at the option of the owner to vacate or to have said building vacated and closed within the time set forth in the order; and

B(2). If the building is in such a condition as to make it dangerous to the health and safety of persons on or near the premises and the owner fails to repair, alter or improve the said building within the time specified in the order, that the owner remove or demolish the said building within a reasonable time as specified in the said order of removal.

CB. That, if the owner fails to comply with an order to repair, alter or improve or, at the option of the owner, to vacate and close the building, the ~~Health~~ Public Officer may cause such building to be repaired, altered or improved, or to be vacated and closed; that the ~~Health~~ Public Officer may cause to be posted on the main entrance of any building so closed, a placard with the following words: "This building is unfit for human habitation or occupancy or use; the use or occupation of this building is prohibited and unlawful."

DC. That, if the owner fails to comply with an order to remove or demolish the building, the ~~Health~~ Public Officer may cause such building to be removed or demolished or may contract for the removal or demolition thereof after advertisement for and receipt of bids therefor.

ED. That the amount of:

- (1) The cost of the filing of legal papers, expert witnesses' fees, search fees and advertising charges, incurred in the course of any proceeding taken under this Chapter determined in favor of the ~~municipality~~ Borough of Rocky Hill; and
- (2) Such cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition, if any, or the amount of the balance thereof remaining after deduction of the sum, if any, realized from the sale of materials derived from such building or from any contract for removal or demolition thereof, shall be a municipal lien against the real property upon which such cost was incurred.

If the building is removed or demolished by the ~~Health~~ Public Officer, the Public Officer ~~he~~ shall sell the materials of such building. There shall be credited against the cost of the removal or demolition thereof, including the clearance and, if necessary, leveling of the site, the proceeds of any sale of

such materials or any sum derived from any contract for the removal or demolition of the building. If there are no such credits or if the sum total of such costs exceeds the total of such credits, a detailed statement of the aforesaid costs and the amount so due shall be filed with the ~~Municipal~~ Borough Tax Assessor-Collector or other custodian of the records of tax liens and a copy thereof shall be forthwith forwarded to the owner by registered mail. If the total of the credits exceed such costs, the balance remaining shall be deposited in the Superior Court by the ~~Health~~ Public Officer, shall be secured in such manner as may be directed by such court and shall be disbursed according to the order or judgment of the court to the persons found to be entitled thereto by final order or judgment of such court. Any owner or party in interest may, within ~~60~~ thirty (30) days from the date of the filing of the lien certificate, proceed in a summary manner in the Superior Court to contest the reasonableness of the amount or the accuracy of the costs set forth in the municipal lien certificate.

- E. If an actual and immediate danger to life is posed by the threatened collapse of any fire damaged or other structurally unsafe building, the Public Officer may, after taking such measures as may be necessary to make such building temporarily safe, seek a judgment in summary proceedings for the demolition thereof.
- F. ~~provided, however, that~~ Nothing in this section 65-5F shall be construed to impair or limit in any way the power of the ~~municipality~~ Borough to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise, nor is anything in this Chapter 64 intended to limit the authority of the enforcing agency or construction official under the "State Uniform Construction Code Act." N.J.S.A. 52:27D-119 *et seq.* or any rules or regulations adopted thereunder.

§ 64-6. Manner of service of complaints and orders.

Complaints or orders issued by the ~~Health~~ Public Officer pursuant to this Chapter shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by said ~~Health~~ Public Officer in the exercise of reasonable diligence, and the said ~~Health~~ Public Officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) successive weeks in a newspaper printed and published in the Borough of Rocky Hill, or in the absence of such newspaper, in a newspaper printed and published in Somerset County and circulating in the Borough. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order, and a copy of such complaint or order shall be duly recorded or lodged for record with the county recording officer of the Somerset County. ~~in which the dwelling is located.~~

§64-6.1. Remedies

Any person aggrieved by an order issued by a Public Officer under Chapter 64 may, within thirty (30) days after the posting and service of such order, bring an action for injunctive relief to restrain the Public Officer from carrying out the provisions of the order and for any other

appropriate relief. The court may proceed in the action in a summary manner or otherwise. The remedy herein provided shall be exclusive, and no person affected by an order of the Public Officer shall be entitled to recover any damages for action taken pursuant thereto, or because of noncompliance by any person with any order of the Public Officer.

§ 64-7. Powers of ~~Health~~ Public Officer.

The ~~Health~~ Public Officer is hereby authorized and empowered to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of ~~this~~ Chapter 64, including the following powers ~~in addition to others herein granted~~:

- A. To investigate the ~~dwelling~~ building conditions in the Borough of Rocky Hill in order to determine which ~~dwellings~~ buildings therein are unfit for human habitation, or occupancy, or use;
- B. To administer oaths, affirmations, examine witnesses and receive evidence;
- C. To enter upon premises for the purpose of making examination, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- D. To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of ~~this~~ Chapter 64; and
- E. To delegate any of his functions and powers under this Chapter to such officers and agents as he may designate.
- F. Pursuant to N.J.S.A. 40:48-2.5a, any building or buildings, or parts thereof, which have come into a state of disrepair through neglect, lack of maintenance or use, fire, accident or other calamities, or through any other act rendering the building or buildings, or parts thereof, in a state of disrepair, to the extent that the building is unfit for human habitation or occupancy or use, shall be deemed inimical to the welfare of the residents of the Borough of Rocky Hill, and a Public Officer appointed pursuant to Chapter 64 and the provisions of N.J.S.A. 40:48-2.3 et seq. may exercise his powers to repair, demolish, or cause the repairing or demolition of the building or buildings, or parts thereof.

Any action taken using municipal funds shall be taken only after advertisement for, and receipt of, bids therefore, pursuant to the provisions of the "Local Public Contracts Law," N.J.S.A. 40A:11-1 et seq., unless the action is necessary to prevent imminent danger to life, limb or property.

§64-7.1. Administration of Ordinance.

Pursuant to N.J.S.A. 40:48-2.10, the Borough Council of Rocky Hill shall prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the buildings in the Borough for the purpose of determining the fitness of such buildings for human habitation or occupancy or use, and

for the enforcement and administration of its ordinances adopted under N.J.S.A. 40:48-2.3 et seq.; and the Borough of Rocky Hill is authorized to make such appropriations from its revenues as it may deem necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of Chapter 64.

§64-7.2. Designation of "Emergency Demolition Fund;" acceptance of funds therefor.

- A. Notwithstanding any law to the contrary, the Public Officer, to finance the costs of accomplishing the purpose of this Chapter, shall have the power to accept gifts or grants from private or public agencies, or to accept donations
- B. All funds received pursuant to subsection a. of this section shall be placed in a separate municipal fund designated as the "Emergency Demolition Fund" to be used solely for demolition related activities.

§ 64-8. Construal of provisions.

Nothing in ~~this~~ Chapter 64 shall be construed to abrogate or impair the power of the Borough or any officer or department to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by ~~this~~ Chapter 64 shall be in addition and supplemental to the powers conferred upon the Borough by any other law or ordinance.

Section 3. Should any provision of this ordinance be determined invalid by a court or administrative tribunal of competent jurisdiction, such determination shall not affect the remaining provisions.

Section 4. This ordinance shall take effect immediately upon final passage and publication as required by law.

ATTEST:

Rebecca P. Newman
Acting Borough Clerk

Edward Zimmerman, Mayor

Introduced: November 15, 2010

Public Hearing Scheduled: December 6, 2010

Adopted:

CERTIFICATION

I, Rebecca P. Newman, Acting Clerk of the Borough of Rocky Hill, do hereby certify the foregoing to be a true and correct copy of an ordinance introduced by the Borough Council of the Borough of Rocky Hill on December 6, 2010.

Rebecca P. Newman
Acting Borough Clerk